

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

EATON CORPORATION,

Plaintiff,

Case No. 03-74844

vs.

HON. GEORGE CARAM STEEH

ZF MERITOR LLC, ARVINMERITOR,  
INC. and ZF FRIEDRICHSHAFEN AG,

Defendants.

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ORDER DENYING DEFENDANTS' MOTION FOR  
RECONSIDERATION OF ORDER DENYING SUMMARY JUDGMENT  
OF INVALIDITY OF CLAIMS 8 AND 9 OF THE '350 PATENT [DOC. # 240]

This court entered an opinion and order denying defendants' motion for summary judgment of invalidity of claims 8 and 9 of the '350 patent on September 19, 2007. Defendants filed this motion for reconsideration on October 3, 2007. For the reasons given below, defendants' motion for reconsideration is DENIED.

In its order, the Court pointed out that the record did not contain sufficient meaningful evidence which could be used to conduct an obviousness analysis. Specifically, the Court could not determine whether it would have been "reasonable for one of ordinary skill in the art to combine the teachings of the prior art in such a way to move the clutch rapidly from a resting position at the Nakadani AP directly to the Cote TP and then to modulate its engagement from there." (Order p. 8)

Local Rule 7.1(g)(3) of the Local Rules of the United States District Court for the Eastern District of Michigan provides:

[M]otions for rehearing or reconsideration which merely present the same

issues ruled upon by the court, either expressly or by reasonable implication, shall not be granted. The movant shall not only demonstrate a palpable defect by which the court and the parties have been misled but also show that a different disposition of the case must result from a correction thereof.

In support of their motion for reconsideration, defendants submit the supplemental declaration of Dr. Davis, which they claim is justified because it rebuts the late-filed declaration of Dr. Caulfield. Regardless, the Court will not consider the opinions contained in Dr. Davis' supplemental declaration in the context of a motion for reconsideration. The experts will be permitted to state and explain their opinions at trial before the trier of fact.

The court finds that defendants' motion does not demonstrate a palpable defect by which the court has been misled. Accordingly,

IT IS ORDERED that defendants' motion for reconsideration is hereby DENIED.  
So ordered.

Dated: December 13, 2007

S/George Caram Steeh  
GEORGE CARAM STEEH  
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on December 13, 2007, by electronic and/or ordinary mail.

s/Josephine Chaffee  
Deputy Clerk